

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

KRISTA LEANNE AMBURN,

Respondtent,

v.

JACOB DEWAYNE ALDRIDGE,

Appellant.

**DOCKET NUMBER WD70159
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

Date: October 27, 2009

Miller County Circuit Court
The Honorable Kenneth L. Oswald, Judge

Appellate Judges:
Division One: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White
Hardwick, Judges

Attorneys:
Charles A. Harter, Esq., Fenton, MO, for appellant.
Conne J. Clark, Esq., Osage Beach, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

KRISTA LEANNE AMBURN

Respondent,

v.

JACOB DEWAYNE ALDRIDGE,

Appellant.

WD70159

MILLER COUNTY

Before Division One Judges: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White Hardwick, Judges

This is an action for declaration of paternity. The circuit court previously entered a judgment declaring Appellant Aldridge to be the father of Respondent Amburn's child, and ordering Aldridge to pay Amburn child support. In a prior appeal we affirmed this judgment; our mandate provided that Amburn should recover from Aldridge her "costs and charges herein expended."

The circuit court granted attorney fees to Amburn after this Court's appellate mandate was issued, despite the fact that Amburn had never requested attorney fees at any time before the mandate was issued. After Aldridge appealed this attorney fee award, Amburn sought and was granted additional attorney fees and costs *pendente lite* for the present appeal. Aldridge challenges both awards.

REVERSED.

Division One holds:

Our mandate, specifying that Amburn should recover her "costs and charges herein expended," did not expressly authorize an award of attorney's fees.

Generally, in the absence of an express directive from the appellate court, a trial court lacks authority to award attorney fees following issuance of an appellate mandate except in two situations. One exception occurs when a party seeks attorney fees prior to the appellate court's

mandate, but the trial court defers its ruling on that motion pending disposition of the appeal. The second exception applies when a party is prevented from making a timely request for attorney fees through no fault of its own, such as by virtue of a bankruptcy stay. Neither exception applies here.

Amburn argues that *S.J.V. by Blank v. Voshage*, 860 S.W.2d 802 (Mo.App.E.D.1993), supports the circuit court's award of attorney fees in this case. In *S.J.V.*, the circuit court was found to have continuing jurisdiction to award attorney fees pursuant to § 210.845. *S.J.V.* is inapplicable because § 210.845 has been changed and now limits the court's jurisdiction to modify decrees to those provisions "respecting support," and also requires demonstration of "substantial and continuing" changed circumstances which render the original decree unreasonable. Amburn can meet neither requirement of § 210.845.

Moreover, *S.J.V.* did not involve a motion for attorney fees filed after issuance of the appellate mandate, as was the case here. The trial court lacked authority to award Amburn her attorney fees for the prior concluded appeal when she first moved for that relief after the appellate mandate issued in the earlier appeal. Similarly, the trial court lacked authority to order attorney fees and costs *pendente lite*. The court's award of attorney fees for the concluded appeal is reversed, as is the court's award of attorney fees and costs *pendente lite*.

Opinion by: Alok Ahuja, Judge

October 27, 2009

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